

AN ACT  
**D.C. ACT 24-760**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JANUARY 17, 2023**

To establish an Opioid Abatement Advisory Commission to make recommendations to the Mayor and Council regarding the use of opioid litigation settlement proceeds and District-wide goals, objectives, and performance indicators relating to opioid use disorder and co-occurring substance use and mental health disorders, and to establish an Office of Opioid Abatement and set forth its powers and duties; to amend the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to make conforming changes; and to amend the Opioid Abatement Fund Establishment Act of 2022 to clarify the monies to be deposited into the Opioid Abatement Fund, to provide for how monies in the Opioid Abatement Fund shall be spent, to require an annual report to the Mayor, Council, and Attorney General concerning opioid abatement activities and the use of monies deposited into the Opioid Abatement Fund, and to require an audit of the Opioid Abatement Fund.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Opioid Litigation Proceeds Amendment Act of 2022”.

TITLE I. OPIOID ABATEMENT

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) “Commission” means the Opioid Abatement Advisory Commission established by section 102.

(2) “Evidence-based” means that an activity, practice, program, service, support, or strategy has undergone multiple randomized controlled trials and observational studies demonstrating that it helps individuals avoid the development and progression of opioid and other substance use disorders or drug-related harms, reduces the adverse consequences of opioid and other substance use, or manages, slows the progression of, or supports recovery from an opioid use disorder or co-occurring substance use or mental health disorder.

(3) “Evidence-informed” means an activity, practice, program, service, support, or strategy that incorporates the best available evidence, patient needs, values, and preferences, and practitioner expertise into the decision-making process.

(4) "Fund" means the Opioid Abatement Fund established by section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441).

(5) "Harm reduction" means an activity, practice, program, service, support, or strategy that addresses both conditions that precede and occur as a result of substance use and attempts to reduce the adverse consequences of opioid and other substance use among persons who continue to use those substances.

(6) "Infrastructure" means the resources, such as personnel, buildings, or equipment, required for the District or another entity to provide evidence-based and evidence-informed harm reduction, prevention, recovery, and treatment activities, practices, programs, services, supports, and strategies to individuals with opioid use disorder and co-occurring substance use and mental health disorders.

(7) "Office" means the Office of Opioid Abatement established by section 103.

(8) "Prevention" means primary, secondary, and tertiary efforts to help individuals avoid the development and progression of opioid use disorder and co-occurring substance use and mental health disorders and drug-related harms.

(9) "Recovery" means a process through which an individual develops a healthier life, which may include:

(A) Improving the individual's quality of life, including the individual's physical and mental health;

(B) The individual's consistent pursuit of abstinence from the substances or behaviors that have negatively impacted them, their family, and their community;

(C) Relief of the individual's symptoms, including substance craving; and

(D) Improvement of the individual's relationships, social connectedness, and interpersonal skills.

(10) "Treatment" means:

(A) An evidence-based or evidence-informed activity, practice, program, service, support, or strategy to intervene upon, care for, manage, slow the progression of, or support recovery from opioid use disorder or co-occurring substance use or mental health disorders;

(B) That is individualized to address each individual's medical needs; and

(C) That includes screening for and diagnosis of substance use disorders or co-occurring mental or physical health disorders, as well as pharmacological and non-pharmacological therapeutic interventions for opioid use disorder or co-occurring substance use or mental health disorders.

Sec. 102. Opioid Abatement Advisory Commission.

(a) There is established an Opioid Abatement Advisory Commission.

(b) The purpose of the Commission shall be to:

(1) Ensure that the monies the District receives and deposits into the Fund are appropriately expended on evidence-based and evidence-informed harm reduction, prevention, recovery, and treatment activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders;

(2) Prioritize and facilitate public involvement, accountability, and transparency in allocating and accounting for these monies; and

(3) Ensure that the monies the District receives and deposits into the Fund have the effect of preventing, treating, and reducing opioid use disorder and co-occurring substance use and mental health disorders and reducing fatalities.

(c) The Commission shall be composed of 21 members, or the member's designee, as follows:

(1) The Director of the Department of Behavioral Health;

(2) The Director of the Department of Health;

(3) The Director of the Department of Health Care Finance;

(4) The Deputy Mayor for Health and Human Services;

(5) The Deputy Mayor for Public Safety and Justice;

(6) The Chief Medical Examiner;

(7) The Attorney General;

(8) The Chairperson of the Council committee with jurisdiction over health matters;

(9) Five members appointed by the Mayor, with the following qualifications:

(A) One member with experience in providing prevention, recovery, treatment, or harm reduction services for opioid use disorder and co-occurring substance use and mental health disorders;

(B) Two members, respectively, with professional expertise and educational backgrounds in:

(i) Medicine; and

(ii) Mental health services;

(C) One member who has experienced opioid use disorder and co-occurring substance use and mental health disorders and recovery; and

(D) One family member of a person or decedent who experienced opioid use disorder and co-occurring substance use and mental health disorders;

(10) One representative each from the:

(A) District of Columbia Behavioral Health Association;

(B) Medical Society of the District of Columbia;

(C) District of Columbia Primary Care Association; and

(D) District of Columbia Hospital Association; and

(11) Four members appointed by the Chairman of the Council, with the following qualifications:



(A) Two members with current experience as direct service providers of prevention, recovery, treatment, or harm reduction services for opioid use disorder and co-occurring substance use and mental health disorders;

(B) One member with professional expertise and an educational background in public health policy or research; and

(C) One member who has experienced opioid use disorder and co-occurring substance use and mental health disorders and recovery.

(d) The Commission shall elect a Chair from among its members.

(e)(1) Each member appointed pursuant to subsection (c)(9) and (11) of this section shall serve a 3-year term; except, that:

(A) Of the Mayor's initial appointments, 2 members shall be appointed for terms of one year, and 2 members shall be appointed for terms of 2 years; and

(B) Of the Council's initial appointments, one member shall be appointed for a term of one year, and 2 members shall be appointed for terms of 2 years.

(2) Members shall serve:

(A) Following the expiration of their terms until their successors have been appointed;

(B) For a maximum of 2 full terms, with partial term service not counted toward this maximum; and

(C) Without compensation; provided, that they shall be reimbursed for necessary expenses incurred in carrying out Commission duties.

(3) Vacancies shall be filled in the same manner as the original appointment for the remainder of the term.

(f) The Commission shall hold public meetings at least quarterly, with meetings called by the Chair or a majority of Commission members. All Commission meetings shall be subject to the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*).

(g) A majority of the Commission's members shall constitute a quorum, and actions of the Commission shall be taken by an affirmative vote of a majority of the members in attendance at a meeting where a quorum is present. Members may attend in person or remotely through audio or audiovisual means.

(h) The Commission shall have the power and duty to:

(1) Establish procedures for the Commission's operations; and

(2) Make recommendations to the Mayor and Council regarding:

(A) District-wide goals, objectives, and performance indicators relating to:

(i) Prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders;

(ii) Reducing disparities in access to prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies; and

(iii) Improving outcomes and reducing mortality in traditionally underserved populations, including for communities of color and current or formerly incarcerated individuals, with regard to prevention, recovery, treatment, and harm reduction infrastructure, activities, practices, programs, services, supports, and strategies;

(B) Governing principles, policies, and procedures for the application for and awarding of monies and grants from the Fund;

(C) Awards of monies and grants from the Fund;

(D) The performance and outcomes of Fund awardees and grantees;

(E) Management of the Fund; and

(F) Any changes to the Fund's purposes.

(i) The Commission's recommendations for the awarding of monies and grants pursuant to subsection (h)(2)(C) of this section shall include the consideration of:

(1) The number of individuals, per capita, with an opioid use disorder, and the number of overdose deaths per capita, in the area that a prospective awardee or grantee seeks to serve;

(2) Disparities in access to care and health outcomes in the area that a prospective awardee or grantee seeks to serve; and

(3) The infrastructure, activities, practices, programs, services, supports, and strategies currently available to individuals with an opioid use disorder in an area that a prospective awardee or grantee seeks to serve.

#### Sec. 103. Office of Opioid Abatement.

(a)(1) There is established within the Department of Behavioral Health the Office of Opioid Abatement.

(2) The Office shall be led by a Director with at least 10 years' professional experience and education in prevention, recovery, treatment, and harm reduction efforts for opioid use disorder and co-occurring substance use and mental health disorders.

(b) The Office shall have the power and duty to:

(1) Conduct a District-wide needs assessment to identify structural gaps and needs related to opioid use disorder and co-occurring substance use and mental health disorders;

(2) Support the Commission's activities by providing staffing, research and policy expertise, facilities, technical assistance, and other resources;

(3) Assist the Commission in preparing its recommendations regarding goals, objectives, and performance indicators pursuant to section 102(h)(2)(A);

(4) Integrate the work of the Office and Commission and Fund expenditures with existing District strategic planning related to opioid use disorder and co-occurring substance use and mental health disorders;

(5) Develop governing principles, policies, and procedures for the application and awarding of monies and grants from the Fund;

(6) Oversee expenditures from the Fund, including by preparing a quarterly accounting of expenditures from the Fund and the Fund balance;

(7) Issue, manage, and oversee awards and grants from the Fund, including collecting and publicly reporting data from awardees and grantees concerning the effectiveness of infrastructure, activities, practices, programs, services, supports, and strategies funded;

(8) Prepare the annual report required by section 5012(f) of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(f)); and

(9) Create and maintain a public website that includes:

(A) Commission meeting attendance, agendas, and minutes;

(B) The governing principles, policies, and procedures developed pursuant to paragraph (5) of this subsection;

(C) The quarterly accountings of Fund expenditures and Fund balance prepared pursuant to paragraph (6) of this subsection;

(D) A listing of awards and grants from the Fund and awardee and grantee data collected pursuant to paragraph (7) of this subsection; and

(E) The annual reports prepared pursuant to section 5012(f) of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(f)).

(c)(1) If the Office decides not to follow a Commission recommendation in whole or in part, the Office shall provide the Commission with a written explanation for its decision within 14 days after the decision is made.

(2) The Commission shall have at least 7 days after receipt of the Office's written explanation provided pursuant to paragraph (1) of this subsection to provide a written response before the Office proceeds with its decision.

#### Sec. 104. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et seq.*), may issue rules to implement the provisions of this title.

#### TITLE II. AMENDMENTS

Sec. 201. Section 106b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.86b), is amended as follows:

(a) Subsection (b) is amended as follows:

(1) Paragraph (2) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(2) Paragraph (3) is amended by striking the period and inserting the phrase “; and” in its place.

(3) A new paragraph (4) is added to read as follows:

“(4) Subject to the limitations of subsection (d)(3)(D) of this section, funds received pursuant to section 5012(b)(1) and (1A) of the Opioid Abatement Fund Establishment



Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(b)(1), (1A)).”.

(b) Subsection (d)(3)(D) is amended to read as follows:

“(D) The Attorney General shall transfer to the Opioid Abatement Fund, established by section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441), at least 85% of any payment received prior to October 1, 2022, in settlement of the cases and settlements, judgments, and consent decrees specified in section 5012(b)(1) and (1A) of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441(b)(1) and (1A)), that was deposited into the Fund, and at least 90% of any payment received thereafter. The Attorney General may elect to retain the remainder of each such payment in the Fund by providing the Mayor, Chief Financial Officer, and Council with written notice of the amount of the election and the relevant payment. In making this election, the Attorney General shall ensure compliance with all applicable settlement terms.”.

Sec. 202. Section 5012 of the Opioid Abatement Fund Establishment Act of 2022, effective September 21, 2022 (D.C. Law 24-167; D.C. Official Code § 1-325.441), is amended as follows:

(a) Subsection (a) is amended by striking the phrase “the Mayor” and inserting the phrase “the Department of Behavioral Health” in its place.

(b) Subsection (b) is amended as follows:

(1) Paragraph (1) is amended as follows:

(A) The lead-in language is amended by striking the phrase “time, in settlement of D.C. Superior Court cases” and inserting the phrase “time, pursuant to the settlement and trust-distribution agreements entered in the following cases” in its place.

(B) Subparagraph (A) is amended by striking the phrase “Case No. 2022-CA-001441-B” and inserting the phrase “Case No. 2022-CA-001441-B (D.C. Super. Ct.)” in its place.

(C) Subparagraph (B) is amended to read as follows:

“(B) *District of Columbia v. McKesson Corp., et al.*, Case No. 2022-CA-001401-B (D.C. Super. Ct.);”.

(D) Subparagraph (C) is amended by striking the phrase “Case No. 2021-CA-00327-B; and” and inserting the phrase “Case No. 2021-CA-00327-B (D.C. Super. Ct.); and” in its place.

(E) A new subparagraph (D) is added to read as follows:

“(D) *In re Mallinckrodt PLC*, No. 20-BK-12522 (Bankr. D. Del.);”

(2) A new paragraph (1A) is added to read as follows:

“(1A) Funds received by the District pursuant to any pre- or post-suit settlement, judgment, or consent decree that the Attorney General designates as an opioid-related settlement, judgment, or consent decree; provided, that the Attorney General shall notify the Mayor and

Council of any such designation within 30 days after the settlement, judgment, or consent decree becoming final; and”.

(c) New subsections (b-1), (b-2), (b-3), and (b-4) are added to read as follows:

“(b-1) Monies in the Fund shall be used only for the following purposes:

“(1) Permissible Opioid Abatement Advisory Commission and Office of Opioid Abatement activities and operations, including personnel, pursuant to sections 102 and 103 of the Opioid Litigation Proceeds Amendment Act of 2022, passed on 2nd reading on December 20, 2022 (Enrolled version of Bill 24-952), respectively;

“(2) District-wide needs assessments to identify structural gaps and needs related to opioid use disorder and co-occurring substance use and mental health disorders;

“(3) Awards and grants for evidence-based and evidence-informed prevention, recovery, treatment, or harm reduction activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders, including evidence-informed pilot programs or demonstration studies;

“(4) Infrastructure required for evidence-based and evidence-informed prevention, recovery, treatment, or harm reduction activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders;

“(5) Evaluations of effectiveness and outcomes for activities, practices, programs, services, supports, and strategies for opioid use disorder and co-occurring substance use and mental health disorders for which monies from the Fund were disbursed, such as the impact on access to harm reduction, services, or treatment for disorders, or reduction in drug-related mortality;

“(6) Publicly available data interfaces, including to aggregate, track, and report:

“(A) Data on opioid use disorder and co-occurring substance use and mental health disorders, overdoses, and drug-related harms; and

“(B) Outcomes of activities, practices, programs, services, supports, and strategies for which monies from the Fund were disbursed;

“(7) The audit required by subsection (g) of this section; and

“(8) Any other opioid abatement activities authorized by any settlement, judgment, or consent decree resulting in funds being deposited into the Fund.

“(b-2) Unless otherwise required by court order, monies in the Fund shall be used for prospective purposes and not to reimburse expenditures incurred prior to the effective date of the Opioid Litigation Proceeds Amendment Act of 2022, passed on 2nd reading on December 20, 2022 (Enrolled version of Bill 24-952).

“(b-3) Monies expended from the Fund for the purposes set forth in subsection (b-1) of this section shall supplement, and not supplant, any other funds, including insurance benefits or District or federal funding, that would otherwise have been expended for such purposes.

“(b-4) Expenditures for Commission and Office activities and operations, including personnel, and expenditures for audits shall comply with any applicable terms in the settlement agreements, judgments, or consent decrees that limit the use of funds for administrative expenses.”.



(d) Subsection (c) is amended by striking the phrase “the Council of the District of Columbia” and inserting the phrase “the Council” in its place.

(e) New subsections (e), (f), and (g) are added to read as follows:

“(e)(1) Notwithstanding subsection (b)(1) and (1A) of this section, the Attorney General may elect to have no more than 15% of any payment that the District receives prior to October 1, 2022, pursuant to the settlements, judgments, and consent decrees referenced in subsection (b)(1) and (1A) of this section, retained in the Litigation Support Fund established pursuant to section 106b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.86b), and no more than 10% of any payment received thereafter.

“(2) The Attorney General shall make an election pursuant to paragraph (1) of this subsection by providing the Mayor, Chief Financial Officer, and Council with written notice of the amount of the election and the relevant payment. In making this election, the Attorney General shall ensure compliance with all applicable settlement terms.

“(f)(1) No later than December 31 of each year, the Department of Behavioral Health shall provide a report to the Mayor, Council, and Attorney General detailing the District’s use of monies in the Fund during the prior fiscal year.

“(2) The annual report required by paragraph (1) of this subsection shall:

“(A) Be published on the Office of Opioid Abatement’s website; and

“(B) Include, for the prior fiscal year:

“(i) The opening and closing balance of the Fund;

“(ii) An accounting and description of all credits to and expenditures from the Fund;

“(iii) An inventory of Fund investments, as of September 30 of the prior fiscal year;

“(iv) The net income the Fund earned;

“(v) A listing of all applications received for awards and grants of monies from the Fund;

“(vi) The name and a description of each awardee or grantee of monies from the Fund, and the amount disbursed to each awardee or grantee;

“(vii) A description of the intended use of each award or grant from the Fund, including the activity, practice, program, service, support, or strategy funded, population served, and measures that the awardee or grantee will use to assess the impact of the award;

“(viii) The primary criteria used to select each awardee or grantee and its respective award or grant amount;

“(ix) A statement as to whether monies disbursed from the Fund supplemented and did not supplant or replace any existing or future local, state, or federal government funding; and

“(x) The progress toward achieving the Opioid Abatement Advisory Commission, Office of Opioid Abatement, and Fund’s purposes, such as metrics on

improving outcomes and reducing mortality and other harms related to opioid use disorder and co-occurring substance use and mental health disorders.

“(g) The Office of the District of Columbia Auditor shall audit the Fund every 5 years.”.

### TITLE III. GENERAL PROVISIONS

#### Sec. 301. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.


(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

#### Sec. 302. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

#### Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

  
Chairman  
Council of the District of Columbia

  
Mayor  
District of Columbia

APPROVED  
January 17, 2023



COUNCIL OF THE DISTRICT OF COLUMBIA  
WASHINGTON, DC, 20004

Docket No. B24-0952

[ X ] ITEM ON CONSENT CALENDAR

[ X ] ACTION

First Reading, CC

[ X ] VOTE DATE

December 6, 2022

[ ] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT


Gray

[ X ] ROLL CALL VOTE – Result

Approved

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Henderson	X					R. White	X				
Allen	X					Lewis George	X					Silverman	X				
Bonds	X					McDuffie	X					T. White	X				
Cheh	X					Nadeau	X										
Gray				X		Pinto	X										
X - Indicate Vote					AB – Absent					NV - Present, Not Voting					Rec - Recused		

CERTIFICATION RECORD

  
Secretary to the Council

1-1-23  
Date

Docket No. B24-0952

[ X ] ITEM ON CONSENT CALENDAR

[ X ] ACTION

Final Reading, CC

[ X ] VOTE DATE

December 20, 2022

[ ] VOICE VOTE

RECORDED VOTE ON REQUEST


ABSENT

[ X ] ROLL CALL VOTE – Result

Approved

Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec	Council Member	Aye	Nay	NV	AB	Rec
Chairman Mendelson	X					Henderson	X					R. White	X				
Allen	X					Lewis George	X					Silverman	X				
Bonds	X					McDuffie	X					T. White	X				
Cheh	X					Nadeau	X										
Gray	X					Pinto	X										
X - Indicate Vote					AB – Absent					NV - Present, Not Voting					Rec - Recused		

CERTIFICATION RECORD

  
Secretary to the Council

1-1-23  
Date